

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (305 m) from pinniped haul-outs and rookeries, except in emergencies or for real-time security incidents (e.g., search-and-rescue, fire-fighting, adverse weather conditions), which may require approaching pinniped haul-outs and rookeries closer than 1,000 feet (305 m).

(8) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred or there is an indication that the distribution, size, or productivity of the potentially affected pinniped populations has been affected, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and, if necessary, appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch of the same vehicle under that Letter of Authorization.

(9) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

**§216.155 Requirements for monitoring and reporting.**

(a) Holders of Letters of Authorization issued pursuant to §§216.106 and 216.157 for activities described in §216.150 are required to cooperate with NMFS, and any other Federal, state or local agency with authority to monitor the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, NMFS, by letter, e-mail, or telephone, at least 1 week prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in §216.150 is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in §216.150(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301-713-2289), and the Administrator, Southwest Region, NMFS, or designee, by telephone (562-980-3232), within 48 hours of the discovery of the injured or dead animal.

(b) The National Marine Fisheries Service must be informed immediately of any changes or deletions to any portions of the proposed monitoring plan submitted, in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site individual(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by those individuals, described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook or recorded on digital video for subsequent analysis for no less than 1 hour prior to the estimated launch time and for up to 1 hour immediately following each missile launch.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of missiles in three dimensions, whenever data coverage allows.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report to the National Marine Fisheries Service, Southwest Regional Office, providing reporting items found under the Letter of Authorization, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means; and

(iv) Evidence of compliance with mitigation measures.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of the regulations in this subpart, providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during

the first 6 months of the final Letter of Authorization.

(4) A revised final comprehensive technical report, including all monitoring results during the entire period of the Letter of Authorization will be due 90 days after the end of the period of effectiveness of the regulations in this subpart.

(5) Both the 60-day and final reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under §§216.106 and 216.157, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

#### §216.156 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to the regulations contained in this subpart, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.150 (Naval Air Warfare Center Weapons Division, U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with §216.157 or a renewal under §216.158.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Applications for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization,